

①  
941988 JUN 2 - 1995

No. \_\_\_\_\_ OFFICE OF THE CLERK

---

---

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1994

\_\_\_\_\_

CAMPS NEWFOUND/OWATONNA, INC.,  
*Petitioner,*  
v.  
TOWN OF HARRISON, *et al.*,  
*Respondents.*

Petition for Writ of Certiorari to the  
Maine Supreme Judicial Court

\_\_\_\_\_

**PETITION FOR WRIT OF CERTIORARI**

\_\_\_\_\_

WILLIAM H. DEMPSEY \*  
SHEA & GARDNER  
1800 Massachusetts Ave., N.W.  
Washington, D.C. 20036  
(202) 828-2000

\* Counsel of Record

*Of Counsel*

WILLIAM H. DALE  
EMILY A. BLOCH  
SALLY J. DAGGETT  
JENSEN BAIRD  
GARDNER & HENRY  
Ten Free Street  
P.O. Box 4510  
Portland, Maine 04112  
(207) 775-7271

June 2, 1995

### QUESTION PRESENTED

Whether a Maine statute, Me. Rev. Stat. Ann. tit. 36, § 652(1)(A)(1), violates the Commerce Clause because it deprives "benevolent and charitable" non-profit institutions of otherwise available property tax exemptions if they are "conducted or operated principally for the benefit of persons who are not residents of Maine."

## TABLE OF CONTENTS

	Page
QUESTION PRESENTED .....	i
TABLE OF AUTHORITIES .....	iv
OPINIONS BELOW .....	1
JURISDICTION .....	1
STATUTORY AND CONSTITUTIONAL PROVI- SIONS INVOLVED .....	2
STATEMENT .....	2
REASONS FOR GRANTING THE WRIT .....	6
I. THE DECISION BELOW SQUARELY CON- FLICTS WITH THIS COURT'S DECISIONS..	7
II. THE DECISION BELOW, IF PERMITTED TO STAND, WOULD LIKELY TRIGGER WIDESPREAD EFFORTS IN THE STATES TO LAY DISCRIMINATORY TAX BURDENS UPON NON-PROFIT ORGANIZATIONS BY VIRTUE OF THEIR INTERSTATE ACTIVI- TIES .....	12
CONCLUSION .....	14
APPENDIX A .....	1a
APPENDIX B .....	9a
APPENDIX C .....	20a
APPENDIX D .....	22a

## TABLE OF AUTHORITIES

CASES:	Page
<i>Armco Inc. v. Hardesty</i> , 467 U.S. 638 (1984).....	8
<i>Associated Indus. v. Lohman</i> , 114 S. Ct. 1815 (1994) .....	7
<i>Bacchus Imports, Ltd. v. Dias</i> , 468 U.S. 263 (1984) .....	4, 9
<i>Boston Stock Exch. v. State Tax Comm'n</i> , 429 U.S. 318 (1977) .....	8
<i>Brown-Forman Distillers v. New York Liquor Auth.</i> , 476 U.S. 573 (1986) .....	5, 8
<i>C &amp; A Carbonne, Inc. v. Town of Clarkstown</i> , 114 S. Ct. 1677 (1994) .....	7
<i>Caminetti v. United States</i> , 242 U.S. 470 (1917)....	9
<i>Chemical Waste Management, Inc. v. Hunt</i> , 112 S. Ct. 2009 (1992) .....	3, 5, 7, 10
<i>City of Philadelphia v. New Jersey</i> , 437 U.S. 617 (1978) .....	8, 9, 11
<i>Commonwealth Edison Co. v. Montana</i> , 453 U.S. 609 (1981) .....	4
<i>Edwards v. California</i> , 314 U.S. 160 (1941) .....	9
<i>Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources</i> , 112 S. Ct. 2019 (1992) .....	8, 11
<i>Grendel's Den, Inc. v. Larkin</i> , 749 F.2d 945 (1st Cir. 1984) .....	12
<i>Guy v. Baltimore</i> , 100 U.S. 434 (1880) .....	8
<i>Heart of Atlanta Motel, Inc. v. United States</i> , 379 U.S. 241 (1964) .....	3, 9
<i>Hughes v. Oklahoma</i> , 441 U.S. 322 (1979) .....	8, 9
<i>Hunt v. Washington Apple Advertising Comm'n</i> , 432 U.S. 333 (1977) .....	7, 8
<i>I.M. Darnell &amp; Son Co. v. City of Memphis</i> , 208 U.S. 113 (1908) .....	9
<i>Lewis v. BT Inv. Managers, Inc.</i> , 447 U.S. 27 (1980) .....	11
<i>Maine Milk Producers v. Commissioner</i> , 483 A.2d 1213 (Me. 1984) .....	5
<i>Maryland v. Louisiana</i> , 451 U.S. 725 (1981) .....	4, 8, 9
<i>New Energy Co. v. Limbach</i> , 486 U.S. 269 (1988)...	8, 9

## TABLE OF AUTHORITIES—Continued

	Page
<i>Oregon Waste Sys. v. Department of Envtl. Quality</i> , 114 S. Ct. 1345 (1994) .....	7, 11
<i>Passenger Cases</i> , 48 U.S. (7 How.) 283 (1849) .....	9
<i>Pike v. Bruce Church, Inc.</i> , 397 U.S. 137 (1970)....	8
<i>United States v. Lopez</i> , 63 U.S.L.W. 4343 (Apr. 26, 1995) .....	13
<i>Venuti v. Riordan</i> , 702 F.2d 6 (1st Cir. 1983) .....	12
<i>Walling v. Michigan</i> , 116 U.S. 446 (1886) .....	8
<i>Westinghouse Elec. Corp. v. Tully</i> , 466 U.S. 388 (1984) .....	8, 9
<i>West Lynn Creamery, Inc. v. Healy</i> , 114 S. Ct. 2205 (1994) .....	7, 9, 11
CONSTITUTION AND STATUTES:	
U.S. Const. art. I, § 8, cl. 3 .....	2
U.S. Const. art. VI .....	2
Me. Rev. Stat. Ann. tit. 36,	
§ 652(1) (A) (1) (1964 & Supp. 1994) .....	2
§ 652(1) (B) (1964 & Supp. 1994) .....	14
28 U.S.C. § 1257 (1988) .....	1
28 U.S.C. § 1341 (1988) .....	12
42 U.S.C. § 1983 (1988) .....	12
LEGISLATIVE MATERIALS:	
Maine Legis. Record 2004 (May 21, 1957) .....	10
OTHER AUTHORITIES:	
F. Hill & B. Kirschten, <i>Federal and State Taxation of Exempt Organizations</i> ¶ 14.04[3][a] (1994) .....	12, 13
Lovejoy's College Guide pp. 504-06 (C.T. Straughn & B.L. Straughn eds., 22d ed. 1993) .....	14

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1994

\_\_\_\_\_  
No. \_\_\_\_\_  
\_\_\_\_\_

CAMPS NEWFOUND/OWATONNA, INC.,

*Petitioner,*

v.

TOWN OF HARRISON, *et al.*,

*Respondents.\**

**Petition for Writ of Certiorari to the  
Maine Supreme Judicial Court**

**PETITION FOR WRIT OF CERTIORARI**

Camps Newfound/Owatonna respectfully petitions for a writ of certiorari to review the judgment of the Maine Supreme Judicial Court in this case.

**OPINIONS BELOW**

The opinion of the Maine Supreme Judicial Court (App. A 1a-8a) is reported at 655 A.2d 876 (1995). The opinion of the Maine Superior Court (App. B 9a-19a) is unreported.<sup>1</sup>

**JURISDICTION**

The Supreme Judicial Court entered its judgment on March 7, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

\* The other respondents are the Town's assessors and its tax collector.

<sup>1</sup> The opinion of the Supreme Judicial Court of Maine is set forth in Appendix A, the opinion of the Superior Court in Appendix B, the Maine statute in Appendix C, and the legislative history of the statute in Appendix D.

## STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 652(1)(A)(1) of Title 36 of the Maine Revised Statutes, Me. Rev. Stat. Ann. tit. 36, § 652(1)(A)(1) (1964 & Supp. 1994) (App. C), provides that property tax exemptions otherwise available to "benevolent and charitable" institutions are to be denied any such institution "that is in fact conducted or operated principally for the benefit of persons who are not residents of Maine."

Article I, Section 8, Clause 3 of the United States Constitution provides that "The Congress shall have Power . . . [t]o regulate Commerce . . . among the several States," and Article VI provides that "This Constitution . . . shall be the supreme Law of the Land."

## STATEMENT

Petitioner is a Maine non-profit corporation that operates a summer camp for Christian Science children in the Town of Harrison, one of the Respondents. App. A 1a-2a.<sup>2</sup> The only Christian Science camp in New England, petitioner recruits across the country to fill its rolls. R. 42.<sup>3</sup> Accordingly, its campers have come predominantly—about 95%—from outside Maine. App. A 2a-3a.

Because so many of its campers are non-residents, petitioner was denied exemption from property taxes under a Maine statute, Me. Rev. Stat. Ann. tit. 36, § 652(1)(A)(1) (App. C), that deprives otherwise qualified "benevolent and charitable" organizations of such exemptions if they are conducted "principally for

<sup>2</sup> The other respondents—the Town's assessors and its tax collector—do not include the State, which intervened as a defendant in the trial court but did not join the other defendants' appeal from that court's decision. App. A 1a n.1.

<sup>3</sup> We cite the record before the Supreme Judicial Court as "R."

the benefit of persons who are not residents of Maine."<sup>4</sup> In 1992, petitioner brought suit in state Superior Court challenging the statute on the ground, *inter alia*, that it is repugnant to the Commerce Clause. App. B 11a.

The taxes for each of the three years (1989-1991) under review were, from petitioner's perspective, substantial, averaging approximately \$20,000. *Id.* at 10a-11a. Petitioner operates at a substantial deficit, which is made up through contributions. R. 38.

The trial court granted summary judgment for petitioner, holding the statute incompatible with the Commerce Clause. Viewing the provision as one "directly discriminat[ing] against interstate commerce," the court judged it under the "per se rule of invalidity" it believed was required by this Court's rulings. App. B 18.<sup>5</sup> The court found an adverse impact on interstate commerce in two interrelated respects: First, the statute conferred "a comparative economic advantage [upon] institutions which provide services primarily to Maine residents in contrast to the economic disadvantage it imposes on those which provide services primarily to out-of-state residents." *Id.* at 15a. Second, there was in consequence an adverse effect upon interstate travel. *Id.* at 14a-15a & n.2, 16a-17a.<sup>6</sup> No difference in public services afforded to the various camps was claimed. *Id.* at 15a. And the plea

<sup>4</sup> The statute also requires that fees exceed \$30.00 per week on average, as petitioners' fees did. App. A 2a-3a & n.4.

<sup>5</sup> The court cited in particular the opinion in *Chemical Waste Management, Inc. v. Hunt*, 112 S. Ct. 2009, 2014-15 (1992). *Id.*

<sup>6</sup> "Inescapably, the direct effect of the denial . . . is to make the cost of providing services to out-of-state residents more expensive, resulting in higher service fees or fewer services." *Id.* at 17a. Defendants did not "contest plaintiff's statement . . . that '[T]o some extent, the cost of the property taxes is passed along to the campers in the form of increased tuition.' . . . [T]he passage of people across state lines is unmistakably a part of interstate commerce. See *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964)." App. B 14a n.2.

that the legislature's purpose was "to aid Maine resident campers" rather than "to harm nonresident campers" was immaterial, for the correlative of a disadvantage to interstate commerce is always a benefit of some sort to local interests.<sup>7</sup> *Id.* at 16a. The contention that the adverse impact on interstate commerce is "minimal" fails even on the respondent's calculation of a cost to petitioner of \$36.64 per camper per week, "particularly if one considers the aggregate effect"; but, in any event, where a substantial impact on interstate commerce is an "inescapable" consequence of a direct discrimination, that impact need not be measured with precision. *Id.* at 17a & n.4.<sup>8</sup> Finally, where a tax directly discriminates against interstate commerce, it is unnecessary to consider whether there are countervailing local interests and whether they could be secured by nondiscriminatory means.<sup>9</sup> In any case, the asserted purpose of "foster[ing] local benefits" would "not [be] thwarted by extending the tax exemption to institutions which serve out-of-state residents." *Id.* at 19a.

On appeal—which the State, though a defendant in the Superior Court, declined to join (App. A 1a n.1)—the Supreme Judicial Court (the "Law Court") reversed the

<sup>7</sup> Citing *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 273 (1984): "A discrimination claim, by its nature, requires a comparison of the two classifications, and it could always be said that there was no intent to impose a burden upon the one party, but rather the intent was to confer a benefit on the other."

<sup>8</sup> "In *Maryland v. Louisiana*, the Court refused to allow for more evidence concerning the extent of the discrimination. 'We need not know how unequal the Tax is before concluding that it unconstitutionally discriminates.' 451 U.S. 725, 760 (1981). It follows from this assertion that the fact of discrimination against interstate commerce, rather than its extent, is the primary consideration . . . ." *Id.*

<sup>9</sup> Citing, *inter alia*, *Bacchus Imports*, 468 U.S. 263; *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981); and *Maryland v. Louisiana*, 451 U.S. 725. *Id.* at 18a.

trial court and upheld the statute.<sup>10</sup> App. A at 8a. Instead of applying the "per se rule of invalidity" with the burden of justification on the State, the court adopted a "flexible approach" under which the broad issue was "whether the state's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits." *Id.* at 4a-5a.<sup>11</sup> Moreover, citing Maine precedent,<sup>12</sup> the court placed a "heavy burden of persuasion" on petitioners. *Id.* at 7a. While acknowledging that this Court has recently stated that "this lesser scrutiny is only available 'where other legislative objectives are credibly advanced and there is no patent discrimination against interstate trade,'" <sup>13</sup> the Law Court held that there was no such discrimination here but that rather the statute "regulates evenhandedly." That is so because it "does not favor in-state camps over out-of-state competitors." Instead, it "treats all Maine charities alike." *Id.* at 5a-6a.

On the balancing test, the court concluded, the statute passes. The purpose of the exemption was "to relieve the charit[ies] from the burden of taxes . . . and thereby to recognize and promote the public benefits that they provide"—"a legitimate state interest." *Id.* at 6a. And the court found no burden on interstate commerce. The statute has no effect on out-of-state organizations; and, given petitioner's religious character, "nothing in the

<sup>10</sup> We refer to the Superior Court as the "trial court" and, following local practice, to the Supreme Judicial Court as the "Law Court."

<sup>11</sup> Citing *Brown-Forman Distillers v. New York Liquor Auth.*, 476 U.S. 573, 579 (1986) (a "flexible approach" to be taken as to a statute that "has only indirect effects on interstate commerce and regulates evenhandedly").

<sup>12</sup> *Maine Milk Producers v. Commissioner*, 483 A.2d 1213, 1218 (Me. 1984).

<sup>13</sup> *Chemical Waste Management*, 112 S. Ct. at 2014 n.5.

record suggests that [it] *competes* with other summer camps." *Id.* at 5a-7a. Moreover, while admittedly there is evidence that the increased costs to petitioner were partly passed along in increased fees, "there is no evidence that the exemption statute impedes interstate travel or that Camps provides services that are necessary for interstate travel." *Id.* at 7a.

### REASONS FOR GRANTING THE WRIT

The argument for review is simple and, we submit, substantial. As to the merits, that argument is made in large measure merely by quotation of the challenged statute. That law deprives Maine "benevolent and charitable institutions" that are conducted "principally for the benefit of persons who are not residents of Maine" of property tax exemptions to which they would otherwise be entitled. It is the interstate aspect of their operations alone that bars the benefit. The legislative history of the provision discloses no purpose for this discrimination other than that evident on its face—the desire to secure tax revenue in virtue of interstate activities while holding harmless identical local activities. Nor is there ground for postulating some other, unmentioned, redemptive purpose.

In such circumstances, under this Court's decisions the constitutional infirmity of the law is plain. Moreover, if undisturbed, the decision below will be taken as precedent for application of a different Commerce Clause standard in testing state and local tax provisions relating to non-profit organizations than the Court applies with respect to other types of enterprise. Given the amplitude of the resources thereby opened to local levy, the probable response by states and municipalities to such an invitation is predictable.

### I. THE DECISION BELOW SQUARELY CONFLICTS WITH THIS COURT'S DECISIONS.

The analytical difference between the trial court and the Law Court that led to their different conclusions was the application by the trial court, on the one hand, of the "strictest scrutiny" standard prescribed by this Court where a statute plainly discriminates against interstate commerce, and the choice by the Law Court, on the other hand, of the "more flexible" balancing test appropriate where there is no such clear discrimination. We submit that the trial court was incontestably correct both in its election of the governing standard and in its application of that standard.<sup>14</sup>

The relevant principles, together with the major precedents, were summarized by this Court recently in a decision relied upon by the trial court, *Chemical Waste Management, Inc. v. Hunt*, 112 S. Ct. 2009 (1992).<sup>15</sup> In that case, the Court struck down a state law that imposed a fee on the disposal of hazardous waste generated outside of, but not within, the state. Taxes that "facially dis-

<sup>14</sup> This is not to suggest that the statute would be valid if properly evaluated under the "more flexible" balancing test. It would not. The factors we discuss relating to impact on interstate commerce, local interests, and alternatives would require a declaration of invalidity on that test as well. The Law Court's error in electing the balancing test was compounded by its imposition of a "heavy burden of persuasion" on petitioner (*supra* p. 5), thereby disregarding this Court's rule under which, even where there is statutory "facial neutrality," the burden is on the state. *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 352, 353 (1977). But we focus upon the choice of tests because of the precedential importance of that election.

<sup>15</sup> For a substantially identical summary, see the subsequent and related opinion in *Oregon Waste Sys. v. Department of Env'tl. Quality*, 114 S. Ct. 1345, 1350-51 (1994). For other relevant decisions after *Chemical Waste Management*, see *West Lynn Creamery, Inc. v. Healy*, 114 S. Ct. 2205 (1994); *C & A Carbonne, Inc. v. Town of Clarkstown*, 114 S. Ct. 1677 (1994); and *Associated Indus. v. Lohman*, 114 S. Ct. 1815 (1994).

criminate[]” against interstate commerce in such fashion, the Court declared, “are generally forbidden” and are “typically struck down without further inquiry.” *Id.* at 2013-14.<sup>16</sup> “‘At a minimum, such facial discrimination invokes the strictest scrutiny of any purported legitimate local purpose and of the absence of nondiscriminatory alternatives.’” *Id.* at 2014.<sup>17</sup> And “the burden falls on the State.” *Id.*<sup>18</sup> There must be “‘some reason, apart from their origin, to treat [the articles of commerce] differently.’” *Id.* at 2015.<sup>19</sup> While the Court has applied a “more flexible approach” involving “lesser scrutiny” in certain cases, that test is “only available ‘where other legislative objectives are credibly advanced and there is no patent discrimination against interstate trade.’” *Id.* at 2014 n.5.<sup>20</sup>

The applicability of these principles to the statute here at issue would appear obvious. A law that denies a tax exemption only to organizations that are “operated principally for the benefit of persons who are not residents of Maine” surely “facially discriminates.” And it is established that denial of a tax exemption is the functional,

<sup>16</sup> Citing *Armco Inc. v. Hardesty*, 467 U.S. 638, 642 (1984); *Walling v. Michigan*, 116 U.S. 446, 455 (1886); *Guy v. Baltimore*, 100 U.S. 434 (1880); *Westinghouse Elec. Corp. v. Tully*, 466 U.S. 388, 406-07 (1984); *Maryland v. Louisiana*, 451 U.S. 725; and *Boston Stock Exch. v. State Tax Comm’n*, 429 U.S. 318, 336-37 (1977).

<sup>17</sup> Quoting *Hughes v. Oklahoma*, 441 U.S. 322, 337 (1979).

<sup>18</sup> Citing *Hunt*, 432 U.S. at 353; *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep’t of Natural Resources*, 112 S. Ct. 2019, 2026-27 (1992); and *New Energy Co. v. Limbach*, 486 U.S. 269, 278-79 (1988).

<sup>19</sup> Quoting *City of Philadelphia v. New Jersey*, 437 U.S. 617, 626-27 (1978); citing also *New Energy Co.*, 486 U.S. at 279-80.

<sup>20</sup> Quoting *City of Philadelphia*, 437 U.S. at 624; citing also *Brown-Forman Distillers Corp.*, 476 U.S. 573, and *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

and therefore the Constitutional, equivalent of imposition of a tax.<sup>21</sup> Moreover, as the trial court held, the other essential elements of constitutional invalidity are clearly present: First, the adverse impact of the discrimination upon petitioner by virtue of its participation in interstate commerce, as well as upon potential and actual interstate travelers, is evident.<sup>22</sup> Second, such travel is a component of interstate commerce within the meaning of the Commerce Clause.<sup>23</sup> Finally, even on the highly dubious as-

<sup>21</sup> *Maryland v. Louisiana*, 451 U.S. at 756 (“[T]he Louisiana First-Use Tax unquestionably discriminates against interstate commerce . . . as the necessary result of various tax credits and exclusions.”); *Westinghouse Elec. Corp.*, 466 U.S. at 399-400 & n.9; *Bacchus Imports*, 468 U.S. 263 (excise tax exemption favoring local beverage interests); *I.M. Darnell & Son Co. v. City of Memphis*, 208 U.S. 113 (1908) (property tax exemption favoring local manufacturers); *West Lynn Creamery*, 114 S. Ct. at 2220 (concurring opinion, Scalia, J.) (an “‘exemption’ from or ‘credit’ against a ‘neutral’ tax, is no different in principle from [a discriminatory tax], and has likewise been held invalid”); *New Energy Co.*, 486 U.S. 269 (sales tax credit favoring local product).

<sup>22</sup> In addition to producing the effects noted by the trial court upon fees and services (*supra* p. 3 n.6), the statute provides a strong incentive for camps to curtail out-of-state enrollment by differential fees and quotas.

<sup>23</sup> In the decision cited by the trial court, *Heart of Atlanta Motel*, 379 U.S. at 253-56, involving the constitutionality of federal civil rights public accommodations legislation, this Court traced back to the *Passenger Cases*, 48 U.S. (7 How.) (1849), the doctrine that interstate commerce within the meaning of the Constitution “include[s] the movement of persons through more States than one,” and to *Caminetti v. United States*, 242 U.S. 470 (1917), the principle that it does not “make any difference whether the transportation is commercial in character.” For the leading preemption case, see *Edwards v. California*, 314 U.S. 160 (1941). See also *Hughes v. Oklahoma*, 441 U.S. 322, 326 n.2 (1979) (“*Philadelphia v. New Jersey*, 437 U.S. 617, 621-23 (1978), made clear that there is no ‘two-tiered definition of commerce.’ The definition of ‘commerce’ is the same when relied on to strike down or restrict state legislation as when relied on to support some exertion of federal control or regulation.”)

sumption that the state's interest in promoting recreation for resident children may be relevant notwithstanding the statute's plain and purposeful discrimination and even though the legislative history of the provision discloses only a discriminatory fiscal purpose,<sup>24</sup> the outcome would be unaffected. Nondiscriminatory means, *e.g.*, the provision of vouchers to resident families, which could be used at all camps including petitioner's, would serve. Nor, for that matter, would the policy of benefiting residents be frustrated by simply extending the exemption to all camps, as the trial court observed. *Supra* p. 4.

But none of this was obvious to the Law Court. Its effort to avoid the *Chemical Waste* test began with its flat, though unaccountable, rejection of the established equivalence of tax exemptions and taxes. App. A 4a.<sup>25</sup> It passed then to an unsupported and insupportable denial of the evident discriminatory purpose and effect of the

<sup>24</sup> So far as revealed by the legislative debates (App. D), the purpose of the provision was simply to raise money from out-of-state interests while protecting in-state interests, though it was objected that the measure would be "discriminating against the people who come to our state." *Id.* at 22a. Thus, the "most important reason for the bill . . . is approximately seven hundred thousand dollars spent all over the State of Maine on taxes to the towns . . ." and "there are a great many hardships that are caused on some of the municipalities by the exemption of taxes. I don't believe that this will affect any business that is in the State run by anybody that is in this State." *Id.* at 28a. The provision is "for institutions that are set up within the State of Maine by out-of-state people for out-of-state people." *Id.* at 22a. This is a paradigm of the sort of parochial purpose against which the Commerce Clause was directed.

<sup>25</sup> In the following, to us impenetrable, passage:

"Tax exemptions are characterized in Maine's tax statutes as 'tax expenditures.' . . . The exemption statute does not impose a tax; it exempts nonprofit corporations that choose to meet certain standards from a tax that all other taxpayers must pay. In effect, the Legislature has decided to expend tax dollars, via an exception, to 'purchase' charitable services from nonprofit organizations." *Id.*

statute. Thus, the court stressed that the statute "does not favor in-state camps over out-of-state competitors" *Id.* at 5a. But that is typical, as this Court has quite recently observed. "State taxes are ordinarily paid by in-state businesses and consumers, yet if they discriminate against out-of-state products, they are unconstitutional." *West Lynn Creamery, Inc. v. Healey*, 114 S. Ct. 2205, 2216 (1994). See also, *e.g.*, *Oregon Waste Sys. v. Department of Env'tl. Quality*, 114 S. Ct. 1345 (1994); *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978); *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources*, 112 S. Ct. 2019 (1992).

As among Maine camps, the Law Court declared the discrimination immaterial because, in view of petitioner's dedication to Christian Science children, "nothing in the record suggests that [petitioner] competes with other summer camps" (App. A 6a)—a purported justification with unfortunate "free exercise" overtones. Apart from the obvious fact that, whether or not petitioner attracts campers of other faiths, other camps are open to Christian Science families, the court paid no heed to the impact of the statute upon interstate travel, noting merely that there was no proof that such travel had actually been impeded. *Id.* at 7a.<sup>26</sup> But, as the trial court pointed out (*supra* p. 4), it is enough under this Court's decisions to show a significant discriminatory tax levy on interstate commerce.<sup>27</sup> If a *de minimis* exculpation can be imagined, surely this was not such a case.

The short of it is that the decision below plainly collides with this Court's interpretation of a key constitutional foundation of federalism, and review should be granted for that reason alone. The error is so palpable,

<sup>26</sup> It should be noted also that there are other camps of an unspecified number, nondenominational so far as appears, that also fall within the statutory exclusion. R. 42-43.

<sup>27</sup> See also *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 41-42 & n.8 (1980).

moreover, that we suggest this is one of those exceptional cases in which summary reversal would be in order. The issue is not one that will benefit by further consideration by lower courts. There has already been more than sufficient exegesis of the "dormant" Commerce Clause in this Court for disposition of this case.<sup>28</sup>

Our argument for review, however, is not based simply upon the Law Court's misconstruction of the Constitution. It is based also upon the significance of that misconstruction, the question to which we now turn.

**II. THE DECISION BELOW, IF PERMITTED TO STAND, WOULD LIKELY TRIGGER WIDESPREAD EFFORTS IN THE STATES TO LAY DISCRIMINATORY TAX BURDENS UPON NON-PROFIT ORGANIZATIONS BY VIRTUE OF THEIR INTER-STATE ACTIVITIES.**

In light of the increasing fiscal pressure upon states and localities in recent years, it is not surprising that the question of tax exemptions for non-profit organizations has received ever greater attention.<sup>29</sup> With the strength

<sup>28</sup> The decision below so sharply departs from this Court's rulings as to suggest the sort of undue deference to state legislatures by state courts that underlay this Court's pre-1983 appellate jurisdiction. Doubtless such instances are so rare that certiorari affords sufficient protection. It is relevant to note in this connection that, because of 28 U.S.C. § 1341 respecting state tax injunction actions, petitioner was unable to bring this suit in federal court.

We note that, should the decision below be reversed, there would remain for decision by the lower court the question of the justiciability of petitioner's claim for relief, including damages, under 42 U.S.C. § 1983. The dismissal of that claim by the trial court on grounds that the municipal defendants could not be held liable for enforcing a state statute (R. 169-70) conflicts with *Venuti v. Riordan*, 702 F.2d 6, 8 (1st Cir. 1983) (Breyer, J.), and *Grendel's Den, Inc. v. Larkin*, 749 F.2d 945, 958-59 (1st Cir. 1984).

<sup>29</sup> "Obtaining and maintaining exemptions from real property taxes has been one of the more controversial issues in recent years . . . . [M]any local governments, traditionally heavily dependent on real property taxes for revenue, have seen their revenue base

of the current movement to shift fiscal responsibility for funding governmental programs from the federal government to the states, there will doubtless be further impetus for efforts to curtail such exemptions.

So far as we can tell, these legislative initiatives, though quite varied, have not yet included the lifting of exemptions on account of interstate activities.<sup>30</sup> Presumably that is due, at least in part, to the Constitutional dubiety of any such move. If the decision below is permitted to stand, there is every reason to suppose that legislatures will accept the apparent invitation. While the Law Court's opinion is scarcely without ambiguity, it is clear enough that the court was searching for a rationale that would distinguish this case from this Court's prior decisions on the basis of the public service character of non-profit organizations like petitioner.<sup>31</sup> And while there is no basis in any of those decisions for drawing such a distinction, it is true that none of them involved non-profit organizations. Moreover, if review is denied, the precedent afforded by the Law Court's decision might be coupled with inferences, however unjustified, from *United States v. Lopez*, 63 U.S.L.W. 4343 (Apr. 26, 1995), in support of limitation of the principles heretofore established with respect to the reach of the "dormant" Commerce Clause.

The incentive to take advantage of this possible opening would be strong, since the potential addition to the

eroded by real property tax exemptions." F. Hill & B. Kirschten, *Federal and State Taxation of Exempt Organizations* ¶ 14.04[3][a] at 14-7 - 14-8 (1994).

<sup>30</sup> See Hill & Kirschten, *supra* note 29.

<sup>31</sup> This is presumably the meaning of the court's reliance upon the "legitimate state interest" in "promot[ing] the public benefits" provided by "charit[ies]," and the characterization of the statute as a decision by "the Legislature . . . to expend tax dollars, with an exemption, to 'purchase' charitable services from non-profit organizations." App. A 4a, 6a.

public purse would be enormous. The targets would include, for example, most, if not all, major private colleges and universities; a host of museums and galleries, many likely to be located in cities with acute budgetary problems; and a broad array of other scientific, literary, and educational organizations.<sup>32</sup>

This invitation should not issue.

### CONCLUSION

If, as we believe, there is no basis for treating non-profit exempt organizations differently than other organizations, the decision below collides so squarely with this Court's decisions and threatens such mischief that review should be granted, with summary reversal an appropriate disposition. If, on the other hand, there might be basis for such a differentiation, certiorari should be granted for plenary review of this question, which would surely be an important one.

Respectfully submitted,

#### *Of Counsel*

WILLIAM H. DALE  
EMILY A. BLOCH  
SALLY J. DAGGETT  
JENSEN BAIRD  
GARDNER & HENRY  
Ten Free Street  
P.O. Box 4510  
Portland, Maine 04112  
(207) 775-7271

WILLIAM H. DEMPSEY \*  
SHEA & GARDNER  
1800 Massachusetts Ave., N.W.  
Washington, D.C. 20036  
(202) 828-2000

\* Counsel of Record

June 2, 1995

<sup>32</sup> Indeed, Maine is home to several colleges of national standing whose non-resident student population might well endanger the tax exemption provision governing such institutions. Me. Rev. Stat. Ann. tit. 36, § 652(1)(B). See *Lovejoy's College Guide* pp. 504-06 (C.T. Straughn & B.L. Straughn eds., 22d ed. 1993) (Bates, 88% of freshman from out of state; Bowdoin, 87%; Colby, 87%).

## **APPENDICES**

APPENDIX A

MAINE SUPREME JUDICIAL COURT

---

Law Docket No. CUM-94-336

CAMPS NEWFOUND/OWATONNA, INC.

v.

TOWN OF HARRISON *et al.*

---

Argued October 31, 1994

Decided March 7, 1995

---

Before WATHEN, C.J., and ROBERTS, GLASSMAN,  
CLIFFORD, RUDMAN, and DANA, JJ.

DANA, J.

The Town of Harrison<sup>1</sup> appeals from a summary judgment (Cumberland County, *Lipez, J.*) in favor of Camps Newfound/Owatonna, Inc., a Maine nonprofit corporation, declaring that Maine's property tax exemption statute, 36 M.R.S.A. § 652(1)(A)(1) (Supp. 1994), violates the Commerce Clause of the United States Constitution. Camps cross appeals the court's denial of its constitutional challenge based upon the Privileges and Immunities Clause of the United States Constitution and the

---

<sup>1</sup> The defendants are the Town of Harrison, the five individuals who serve as the Town's assessors, and the individual who serves as the Town's tax collector. The State intervened as a party defendant and filed a cross-motion for a summary judgment in the Superior Court, but did not appeal.

Equal Protection Clauses of the United States and Maine Constitutions. Because we find the statute constitutional, we vacate the judgment and remand for entry of a summary judgment for the Town.<sup>2</sup>

Camps operates a summer camp in Harrison for children of the Christian Science faith. In April 1992, by a letter to the Harrison Board of Assessors,<sup>3</sup> Camps demanded a tax refund for 1989 through 1991 and a continuing tax exemption pursuant to Maine's charitable tax exemption statute, 36 M.R.S.A. § 652(1)(A)(1) (Supp. 1994). The statute denies property tax exemptions, otherwise available, to nonprofit institutions that are "in fact conducted or operated principally for persons who are not residents of Maine and [make] charges that result in an average weekly rate per person . . . in excess of \$30."<sup>4</sup> Between 1989 and 1992, approximately 95% of

<sup>2</sup> Additionally, Camps appeals the Superior Court's (Cumberland County, *Perkins, J.J.* dismissal of count II of its complaint setting forth its claim for relief pursuant to 42 U.S.C. §§ 1983 and 1988. The Town and its representatives also brought a summary judgment motion arguing that Camps' constitutional claims were barred by *res judicata*, waiver, and/or collateral estoppel; the Superior Court (Cumberland County, *Lipez, J.*) denied this motion, and the Town appeals. Because we find the exemption statute constitutional in all respects, it is not necessary to discuss these other issues raised by the parties.

<sup>3</sup> In *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 604 A.2d 908 (Me. 1992), we denied Camps' appeal of a partial tax abatement for 1989 granted by the Harrison Board of Assessors. Camps' 1989 abatement application and subsequent appeals were based on the alleged overvaluation of Camps' property and, specifically, the assessor's failure to adjust the valuation to reflect the existence of a 25-year conservation easement that Camps had placed on the property. Camps did not assert any constitutional challenges.

<sup>4</sup> 36 M.R.S.A. § 652(1)(A)(1) (Supp. 1994) provides:

Any such institution which is in fact conducted or operated principally for the benefit of persons who are not residents of Maine is entitled to exemption not to exceed \$50,000.00 of

the campers were out-of-state residents, most of whom paid weekly fees ranging from \$370 to \$445. Following the refusal of the Board of Assessors to grant the exemption in June 1992, Camps filed its complaint in the Superior Court challenging the board's decision and in April 1993 moved for a summary judgment on its constitutional claims.

### Standards

Summary judgment is appropriate if "there is no genuine issue as to any material fact" and the moving party "is entitled to a judgment as a matter of law." M.R. Civ. P. 56(c). We review the evidence before the Court in the light most favorable to the party against whom the judgment was granted to determine if the trial court committed an error of law. *Dube v. Homeowners Assistance Corp.*, 628 A.2d 1040, 1041 (Me. 1993). "All legislative enactments are presumed constitutional, and the party challenging the constitutionality of a statute bears the burden of proof. This presumption, however, is not absolute; legislation which violates an express mandate of the constitution is invalid even though it is expedient or is otherwise in the public interest." *Maine Beer & Wine Wholesalers v. State*, 619 A.2d 94, 97 (Me. 1993) citations omitted; see also *Spiller v. State*, 627 A.2d 513, 515 (Me. 1993). "[S]tatutes . . . will be construed, where possible, to preserve their constitutionality [and the] . . . party attacking the constitutionality of a state stat-

current just value only when the total amount of any stipends or charges which it makes or takes during any tax year, as defined by section 502, for its services, benefits or advantages during the same tax year does not result in an average rate in excess of 30.00 per week . . . No such institution which is in fact conducted or operated principally for the benefit of persons who are not residents of Maine and makes charges which result in an average weekly rate per person, as computed under the subparagraph, in excess of \$30.00 may be entitled to tax exemption. This subparagraph does not apply to institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research.

ute . . . carries a heavy burden of persuasion.” *Maine Milk Producers v. Commissioner of Agric.*, 483 A.2d 1213, 1218 (Me. 1984) (citations omitted); see *Eastler v. State Tax Assessor*, 499 A.2d 921, 925 (Me. 1985). A statute’s unconstitutionality “must be established to such a degree of certainty as to leave no room for reasonable doubt.” *Orono-Veazie Water Dist. v. Penobscot City Water Co.*, 348 A.2d 249, 253 (Me. 1975); e.g., *Small v. Gartley*, 363 A.2d 724, 732 (Me. 1976).

#### Commerce Clause

The Commerce Clause by its terms grants authority to Congress to “regulate Commerce . . . among the several States.” U.S. Constitution, Art. I, § 8, cl. 3. It has long been interpreted to forbid the States from discriminating against interstate trade. *Associated Indus. of Missouri v. Lohman*, — U.S. —, 62 U.S.L.W. 4391, 4392-93 (1994). This prohibition is often referred to as the “dormant” or “negative” Commerce Clause. The Superior Court found that the exemption statute violates this dormant Commerce Clause. We disagree.

Tax exemptions are characterized in Maine’s tax statutes as “tax expenditures.” 36 M.R.S.A. § 196 (1990). The exemption statute does not impose a tax; it exempts nonprofit corporations that choose to meet certain standards from a tax that all other taxpayers must pay. In effect, the Legislature has decided to expend tax dollars, via an exemption, to “purchase” charitable service from nonprofit organizations.

The United States Supreme Court has adopted a “two-tiered approach to analyzing state economic regulation under the Commerce Clause.” *Aseptic Packaging Council v. State*, 637 A.2d 457, 461 (Me. 1994) (quoting *Brown-Forman Distillers v. N.Y. Liquor Auth.*, 476 U.S. 573, 579 (1986)). The first tier is a “per se rule of invalidity” and the second is a “flexible approach.” Under the “per se rule of invalidity” approach, “[w]hen a state

statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, [courts] have generally struck down the statute without further inquiry.” *Id.* This approach “applies ‘not only to laws motivated solely by a desire to protect local industries from out-of-state competition, but also to laws that respond to legitimate local concerns by discriminating arbitrarily against interstate trade.’” *Aseptic Packaging Council*, 637 A.2d at 461 (quoting *Chemical Waste Management, Inc. v. Hunt*, — U.S. —, 112 S.Ct. 2009, 2015 n.6 (1992), itself quoting *Maine v. Taylor*, 477 U.S. 131, 148 n.19 (1986)).

The Court has adopted a “flexible approach” when the statute “has only indirect effects on interstate commerce and regulates evenhandedly.” *Brown-Forman*, 496 U.S. at 580. In those circumstances, the Court examines “whether the state’s interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits.” *Id.* The Supreme Court has recently stated that “this lesser scrutiny is only available ‘where other legislative objectives are credibly advanced and there is no patent discrimination against interstate trade.’” *Chemical Waste*, 112 S.Ct. at 2014 n.5.

Our first step is to determine whether to apply the rule of per se invalidity or to adopt the flexible approach. In order to do so we must decide whether the exemption statute regulates evenhandedly with only incidental effects on interstate commerce or whether, in fact, it does discriminate against interstate commerce. “Discrimination” refers to different treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter. *Oregon Waste Sys. v. Department of Env’tl. Quality*, — U.S. —, 114 S.Ct. 1345, 1350 (1994).

The exemption statute does not favor in-state camps over out-of-state competitors. Rather, it favors, among in-state camps, those that serve a majority of in-state campers. The case before us demonstrates this point.

Camps is a Maine corporation, and no out-of-state competitor complains that the statute favors in-state camps at its expense. Moreover, the exemption statute is not directed at taxes on the persons served by the charity but, rather, on real property taxes for which the charity would otherwise be liable. The exemption statute treats all Maine charities alike. They all have the opportunity to qualify for an exemption by choosing to dispense the majority of their charity locally. If there is any impact on interstate commerce it is incidental; it is not the purpose of the exemption statute to affect the number of out-of-state campers attending summer camps within Maine. Because the exemption statute regulates evenhandedly with only incidental effects on interstate commerce, we apply the flexible approach, examining whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits. *Brown-Forman*, 496 U.S. at 580.

The purpose of any tax exemption for charitable institutions is to relieve the charity from the burden of taxes on their limited budgets and thereby to recognize and promote the public benefits that they provide. This is a legitimate state interest. Furthermore, the burden on interstate commerce does not clearly exceed the local benefits. The exemption statute bears no resemblance to the types of economic regulation that "excite those jealousies and retaliatory measures the Constitution was designed to prevent." See *C & A Carbone, Inc. v. Town of Clarkstown*, — U.S. —, 62 U.S.L.W. 4315, 4317 (1994). The statute neither increases costs to out-of-state firms nor forces them to leave the market.

Indeed, in the case before us nothing in the record suggests that Camps competes with other summer camps outside of or within Maine or that Camps has lost business to competitors. Camps is unique, serving a very limited segment of the population who choose to attend Camps because of the religious affiliation and the desirability of the location and the services. Furthermore, Camps delivers its services only within Maine. Camps

does not claim that the exemption statute places it at a competitive disadvantage in attracting campers. Rather, it suggests that paying the taxes precludes it to a certain extent from providing supplemental services for its campers, such as outside art and music consultants. Finally, although the record suggests that the denial of a tax exemption results in increased costs that are passed along "to some extent" to the campers in the form of increased tuition, there is no evidence that the exemption statute impedes interstate travel or that Camps provides services that are necessary for interstate travel. Camps has not met its heavy burden of persuasion that the exemption statute is unconstitutional. See *Maine Milk Producers*, 483 A.2d at 1218.

#### *Equal Protection Clauses*

In *Green Acres Baha'i Inst. v. Town of Eliot*, 159 Me. 395, 193 A.2d 564 (1963) (*Green Acres II*), we upheld Maine's charitable tax exemption statute under the equal protection clauses of the Maine and United States Constitutions. The case before us and *Green Acres II* are virtually identical. Neither has the statute materially changed since we decided *Green Acres II*, nor has the equal protection analysis under federal or Maine law so changed as to justify our deviation from *Green Acres II*. See *Why, Inc. v. Glassboro*, 393 U.S. 117, 120 (1968) (stating that it is permissible for states to engage in local benefit analysis); *Lambert v. Wentworth*, 423 A.2d 527, 531 (Me. 1980) (stating that not all burdens on the right to travel implicate strict scrutiny analysis). Assuming without deciding that Camps has standing to argue the constitutional rights of the campers, see *Craig v. Boren*, 429 U.S. 190, 194-95 (1976), we find that the exemption statute does not violate the equal protection clause of either the United States or Maine Constitutions.

#### *Privileges and Immunities Clause*

Camps also argues that the exemption statute violates the Privileges and Immunities Clause of Article IV, sec-

tion 2 of the United States Constitution which provides that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Camps argues that the campers' rights to travel and to be free from discriminatory taxation are protected by the Privileges and Immunities Clause.

We find that the exemption statute does not violate the Privileges and Immunities Clause. The campers may pay a slightly higher tuition if they choose to attend Camps, but they are not directly subject to state taxation. Additionally, the exemption statute does not burden any fundamental rights of the campers. In *Baldwin v. Montana Fish and Game Comm'n*, 436 U.S. 371 (1978), the Supreme Court rejected a privileges and immunities attack on a Montana scheme for issuing elk-hunting licenses and held that the Privileges and Immunities Clause only applies to distinctions between nonresidents and residents with respect to "basic and essential activities, interference with which would frustrate the purposes of the formation of the Union." *Id.* at 387. An activity must bear "upon the vitality of the Nation as a single entity" before discrimination with respect to it will trigger the Clause. *Id.* at 383. The right to attend a recreational summer camp is not a fundamental right, and therefore the exemption statute does not violate the Privileges and Immunities Clause.

Because we find that the exemption statute is not unconstitutional, it is not necessary to discuss the other issues raised by the parties on appeal.

The entry is:

Judgment vacated with respect to count I, and remanded to the Superior Court for entry of a summary judgment for the Town of Harrison. Judgment affirmed with respect to count II.

All concurring.

## APPENDIX B

STATE OF MAINE  
CUMBERLAND, SS.

### SUPERIOR COURT

Civil Action

Docket No. CV-92-658

CAMPS NEWFOUND/OWATONNA, CORPORATION,  
*Plaintiff*

v.

INHABITANTS OF THE TOWN OF HARRISON, SUSAN SEARLES,  
MICHAEL DARCY, PAUL KILGORE, ALBERT HAGGERTY,  
and ROBERT BAKER, as the Harrison Municipal Officers  
and Assessors, and MICHAEL THORNE as the Harrison  
Tax Collector,

*Defendants*

and

STATE OF MAINE,

*Intervenor*

### DECISION AND ORDER

Before the court are (1) Plaintiff Camps Newfound/Owatonna, Corporation's motion for summary judgment based upon constitutional challenges to Maine's charitable tax exemption statute, (2) Intervenor State of Maine's cross-motion for summary judgment based upon the same constitutional issues, and (3) Defendants Town of Harrison and its tax assessor's and collector's (collectively, Municipal Defendants) motion for summary judgment based

upon the alleged *res judicata*, waiver, and/or collateral estoppel effect of the prior legal action by plaintiff challenging its 1989 partial tax abatement.

### BACKGROUND

Plaintiff, a Maine non-profit corporation, operates a summer camp in Harrison, Maine for children of the Christian Science faith. During the years 1989 through 1992, approximately 95% of the campers were out-of-state residents. These campers paid fees ranging from \$370.00 per week in 1989 to \$445.00 per week in 1992 to attend the camp, except to the extent that they received scholarship aid.

By letter dated April 15, 1992, plaintiff demanded a tax refund for the years 1989 through 1991 and a continuing tax exemption pursuant to Maine's charitable tax exemption statute which denies property tax exemptions, otherwise available, to charitable and benevolent institutions that are "in fact conducted or operated principally for persons who are not residents of Maine" and charge more than \$30.00 per week per person. 36 M.R.S.A. § 652(1)(A)(1) (Supp. 1993).<sup>1</sup> Plaintiff pays approxi-

<sup>1</sup> Section 652(1)(A)(1) provides:

Any such institution that is in fact conducted or operated principally for the benefit of persons who are not residents of Maine is entitled to an exemption not to exceed \$50,000 of current just value only when the total amount of any stipends or charges that it makes or takes during any tax year, as defined by section 502, for its services, benefits or advantages during the same tax year does not result in an average rate in excess of \$30 per week when said weekly rate is computed by dividing the average yearly charge per person by the total number of weeks in a tax year during which such institution is in fact conducted or operated principally for the benefit of persons who are not residents of Maine. No such institution that is in fact conducted or operated principally for the benefit of persons who are not residents of Maine and makes charges that result in an average weekly rate per person, as

mately \$20,000.00 per year pursuant to 36 M.R.S.A. § 652(1)(A)(1). Although plaintiff's letter recognized that on the face of the statute it was not entitled to an exemption, plaintiff claimed that the statute was unconstitutional and plaintiff was, therefore, entitled to the exemption. In response to plaintiff's letter, the assessors denied plaintiff's request stating that it was neither the role nor duty of the Board of Assessors to pass judgment on or overrule a state statute.

On June 3, 1992, plaintiff filed a two count complaint against the Municipal Defendants alleging that the charitable tax exemption statute violates the equal protection provision of the Maine Constitution, and the Commerce Clause, the Equal Protection Clause, and the Article IV, section 2 Privileges and Immunities Clause of the U.S. Constitution. Plaintiff requested (1) declaratory and injunctive relief and (2) relief and damages under 42 U.S.C. § 1983. On April 28, 1993, the court (*Perkins, J.*) granted the Municipal Defendants' motion to dismiss Count II of the Complaint which sought relief under 42 U.S.C. § 1983. Count I, which sought declaratory and injunctive relief from the alleged constitutional violations, survived defendants' motion. On August 3, 1992, the State intervened to defend the constitutionality of Maine's charitable tax exemption statute.

On April 9, 1993, plaintiff brought a motion for summary judgment, and on May 25, 1993, the State brought a cross-motion for summary judgment. Both motions go to the merits of the constitutional claims. On May 28, 1993, the Municipal Defendants brought a summary judgment motion arguing that plaintiff's constitutional claims are barred by *res judicata*, waiver, and/or collateral estoppel because plaintiff could have brought these

computed under this subparagraph, in excess of \$30 may be entitled to tax exemption. This subparagraph does not apply to institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research.

claims during plaintiff's prior legal challenge to a partial abatement of their 1989 tax valuation. *See Camps New-found/Owatonna, Inc. v. Town of Harrison*, 604 A.2d 908 (Me. 1992).

## DISCUSSION

### I. *Res Judicata, Waiver, Collateral Estoppel*

As a preliminary matter, plaintiff's claims for 1989 and 1990 are not barred by *res judicata*, waiver, or collateral estoppel. While plaintiff did bring a prior 80B action to challenge the Town Board of Assessors' decision to grant a partial tax abatement of its 1989 tax valuation, the Board of Assessors does not have authority to determine the constitutionality of state taxing statutes. It would have been futile for plaintiff to challenge the constitutionality of Maine's charitable tax exemption statute before the Board of Assessors. *See Minster v. Town of Gray*, 584 A.2d 646 (Me. 1990).

### II. *Equal Protection*

In *Green Acres Baha'i Inst. v. Town of Eliot*, 159 Me. 359 (1963) ("*Green Acres II*"), the Law Court upheld Maine's charitable tax exemption statute under the equal protection clauses of the Maine and U.S. Constitutions. *Green Acres II* and the present case are virtually identical. Both cases were instituted by nonsecular institutions who would have otherwise qualified for a charitable tax exemption except the majority of their camper patrons resided outside of Maine. The statute has not materially changed since *Green Acres II* was decided. Nor has equal protection analysis under federal or state law so changed as to justify the court's deviation from *Green Acres II* on equal protection grounds. *See WHYY, Inc. v. Borough of Glassboro*, 393 U.S. 117, 120 (1968) (stating that it is permissible for states to engage in local benefit analysis); *Lambert v. Wentworth*, 423 A.2d 527, 532, 534 (Me. 1980) (stating that not all burdens on the right to travel implicate strict scrutiny analysis).

Since *Green Acres II* did not consider a challenge to Maine's charitable tax exemption statute under the Commerce Clause or the Privileges and Immunities Clause, resolution of these new challenges is not dictated by *Green Acres II*. Although disparate treatment of services for in-state and out-of-state residents may be sanctioned on equal protection grounds because services for in-state residents provide greater local benefits, such disparate treatment on local benefit grounds is not necessarily sanctioned under the Commerce Clause or the Privileges and Immunities Clause. The rationale for upholding a tax under an equal protection challenge will not necessarily satisfy other constitutional challenges. Constitutional standards of analysis of different constitutional provisions may vary in order to protect different constitutional interests.

### III. *Commerce Clause*

A state tax does not offend the Commerce Clause if it (1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to services provided by the state. *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977). The constitutionality of Maine's charitable tax exemption statute turns on the third factor—whether the statute discriminates against interstate commerce.

In *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 617-19 (1981), the Supreme Court analyzed whether the Montana severance tax which was imposed on each ton of coal mined in the State discriminated against interstate commerce. Although the tax burden was borne primarily by non-Montana utilities because 90% of the coal was shipped out-of-state, the tax was held nondiscriminatory. The Court reasoned that the tax was computed at the same rate regardless of its final destination, and the tax burden was borne according to

the amount of coal consumed and not according to any distinction between in-state and out-of-state consumers.

In contrast, the Supreme Court in *Maryland v. Louisiana*, 451 U.S. 725, 753-60 (1981), held discriminatory Louisiana's "first use" tax on gas imported into the State which was not previously subjected to state or federal taxation. The tax was imposed on pipeline companies which brought gas in from the federal Outer Continental Shelf (OCS) to be processed in Louisiana. Most of the OCS gas was then sold to out-of-state consumers. Tax exemptions and credits for the first use tax operated so that Louisiana consumers of OCS gas for the most part were not burdened by the tax. However, the tax applied uniformly to gas moving out-of-state. By statute, the first use tax was prohibited from being allocated to any party other than the ultimate consumer. Applying the four part *Complete Auto* test, the Supreme Court held that the first use tax discriminated against interstate commerce. *Id.* at 754-56. The tax provided a direct commercial advantage to local business. *Id.* at 754. Furthermore, the costs charged to compensate the State for the protection and use of its resources were different for local and interstate commerce and, thus, the tax did not provide for equality of treatment between local and interstate commerce. *Id.* at 759.

Maine's charitable tax exemption statute denies property tax exemptions to charitable and benevolent institutions that are "in fact conducted or operated principally for persons who are not residents of Maine" and charge more than \$30.00 per week per person. 36 M.R.S.A. § 652(1)(A)(1). Denial of a tax exemption is explicitly and primarily triggered by engaging in a certain level of interstate commerce. This denial makes operation of the institutions serving non-residents more expensive.<sup>2</sup> This

<sup>2</sup> Neither the state nor municipal defendants contest plaintiff's statement of material fact, based on the affidavit of Susan Smith, that "[T]o some extent, the cost of the property taxes is passed

increased cost results from an impermissible distinction between in-state and out-of-state consumers. See *Commonwealth Edison Co.*, 453 U.S. at 617-19. Although in-state activities may be required to pay their way, a tax must provide for equality of treatment between local and interstate commerce. *Maryland v. Louisiana*, 451 U.S. at 759. Maine's charitable tax exemption is denied, not because there is a difference between the activities of charitable institutions serving residents and non-residents, but because of the residency of the people whom the institutions serve.

Although the exemption is not denied to all charitable institutions that provide services to out-of-state residents, the statute is still discriminatory. It impermissibly creates a comparative economic advantage for institutions which provide services primarily to Maine residents in contrast to the economic disadvantage it imposes on those which provide services primarily to out-of-state residents.<sup>3</sup> Even though charitable institutions are not operated to generate profits, they operate to provide services and may qualify in every other sense as a business. Since economic demands, e.g. taxes, must be met to ensure continued serv-

---

along to the campers in the form of increased tuition." Although this increased cost affects people moving across state lines, rather than goods, the passage of people across state lines is unmistakably a part of interstate commerce. See, *Heart of Atlanta Hotel, Inc. v. United States*, 379 U.S. 241 (1964).

<sup>3</sup> See *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 271 (1984) (exemption from liquor tax for only certain types of in-state produced liquor is clearly discriminatory even though it does not apply to all locally produced products; as long as there is some competition between exempt in-state and nonexempt out-of-state products there is a discriminatory effect). See also *Private Truck Council of America, Inc. v. Secretary of State*, 503 A.2d 214, 218 (Me. 1986) (statute discriminatory even though it only discriminates against some, not all, foreign-registered trucks driven in Maine; "Balkanization, even though only partial, is still Balkanization.").

ices, tax exempt status is an economic advantage for institutions primarily serving Maine residents.

The State suggests that the charitable tax exemption statute does not violate the Commerce Clause because the purpose of the tax was to provide local benefits in the form of services to Maine residents. That argument is unavailing:

The determination of constitutionality does not depend upon whether one focuses upon the benefitted or the burdened party. A discrimination claim, by its nature, requires a comparison of the two classifications, and it could always be said that there was no intent to impose a burden upon the one party, but rather the intent was to confer a benefit on the other.

*Bacchus Imports, Ltd. v. Dias*, 468 U.S. at 273. Consequently, it is irrelevant to Commerce Clause inquiry that the motivation of the Legislature may have been the desire to aid Maine resident campers and not to harm non-resident campers. *Id.*; see *Chemical Waste Management, Inc. v. Hunt*, 119 L.Ed.2d 121, 133 n.6 (1992) ("The 'virtually per se rule of invalidity' applies 'not only to laws motivated solely by a desire to protect local industries from out-of-state competition, but also to laws that respond to legitimate local concerns by discriminating arbitrarily against interstate trade.'" (citations omitted)).

Although the State further suggests that the Maine charitable tax exemption is about fostering in-state social benefits through tax exemptions which are the equivalent of tax expenditures, the denial of a tax exemption is fundamentally about raising revenue. Enhancing local benefits through tax policy at the expense of interstate commerce is a matter within the purview of the Commerce Clause, and, despite the State's effort to recharacterize the tax exemption as a tax expenditure, tax exemptions do not escape Commerce Clause analysis. See

*Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (Hawaiian tax exemption from liquor tax for only certain types of in-state produced liquor violates Commerce Clause).

The Municipal Defendants suggest that the impact of the denial of the tax exemption on interstate commerce is too minimal to violate the Commerce Clause.<sup>4</sup> Inescapably, the direct effect of the denial, when all else is equal, is to make the cost of providing services to out-of-state residents more expensive, resulting in higher service fees or fewer services. In *Maryland v. Louisiana*, the Court refused to allow for more evidence concerning the extent of the discrimination: "We need not know how unequal the Tax is before concluding that it unconstitutionally discriminates." 451 U.S. at 760. It follows from this assertion that the fact of discrimination against interstate commerce, rather than its extent, is the primary consideration in determining the constitutionality of state taxes affecting interstate commerce.

It is also unnecessary to consider whether the charitable tax exemption statute, although discriminatory, can be saved by considering the town's interest in the tax and whether nondiscriminatory alternatives are available.

Although decisions concerning the constitutional validity of state taxes affecting interstate commerce can be assessed in terms of an interest-balancing process similar to that employed in the judicial evaluation of state regulation, the Supreme Court has not

<sup>4</sup> According to the Municipal Defendants' computation, if the \$20,700.00 tax cost for the year 1991 was allocated to each camper's tuition charge, the cost to each camper would be \$36.64. The Municipal Defendants suggest this is minimal in comparison to the \$425.00 weekly tuition charges for 1991. See Municipal Defendants' Objection to Plaintiff's Motion for Summary Judgment and Memorandum at 12 n.6 and 17, dated May 21, 1993. The court disagrees that \$36.64 is minimal, particularly if one considers the aggregate effect of this figure. More importantly, however, that figure confirms the fact of discrimination against interstate commerce.

usually organized its analysis in terms of such balancing. This is partly a consequence of the fact that the state's ultimate interest is the same in all tax cases—namely, raising revenue.

Laurence H. Tribe, *American Constitutional Law* 441 (2d ed. 1988).<sup>5</sup>

Even if the court did employ the interest-balancing process in this case, the tax exemption statute would not pass muster.<sup>6</sup> The statute directly discriminates against interstate commerce, and, as such, is analyzed under the “per se rule of invalidity” approach. See *Aseptic Packaging Council v. State of Maine*, No. 6780, slip op. at 7 (Me. Feb. 17, 1994). To overcome per se invalidity, the State has the burden

“to justify [the statute] both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake.” . . . The burden is on the State to show that “the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism . . .”

*Id.* at 7-8 (quoting *Chemical Waste Management v. Hunt*, 112 S. Ct. 2009, 2014-15 (1992)).

<sup>5</sup> See also *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (Supreme Court did not consider whether the discriminatory tax was justified by legitimate or compelling government interests, or whether reasonable alternatives were available to the taxing scheme); *Commonwealth Edison Co. v. Montana*, 453 U.S. 609; *Maryland v. Louisiana*, 451 U.S. 725; *Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318 (1977); *American Trucking Ass'n, Inc. v. Quinn*, 437 A.2d 623 (Me. 1981); *Private Truck Council of America, Inc. v. Secretary of State*, 503 A.2d 214 (Me. 1986).

<sup>6</sup> Plaintiff suggests that the interest-balancing process is applicable, and that the statute fails under either the “per se rule of invalidity” or the “flexible approach” to the interest-balancing process. The State neither discussed whether the interest-balancing process applied nor responded to plaintiff's argument that the statute fails either approach.

The State argues that the purpose of the charitable tax exemption statute is to foster local benefits. This purpose, however, is not thwarted by extending the tax exemption to institutions which serve out-of-state residents. A non-discriminatory alternative is available. To the extent that this nondiscrimination alternative is deemed “unavailable” because needed tax revenue would be lost by the extension of the exemption, this argument only emphasizes that the fundamental reason for the denial of a tax exemption is to raise revenue. This fact further confirms Professor Tribe's point that “the state's ultimate interest is the same in all tax cases—namely, raising revenue,” and hence the interest-balancing process in state tax cases affecting interstate commerce makes little sense. Tribe, *supra*, at 411.

As the court concludes that the charitable tax exemption statute is unconstitutional under the Commerce Clause, the court need not address the constitutionality of the statute under the Privileges and Immunities Clause.

## ORDER

Wherefore, the Order and Entry shall be:

The Municipal Defendants' and the State's motions for summary judgment are DENIED.

Plaintiff's motion for summary judgment is GRANTED. The court declares 36 M.R.S.A. § 652 (1)(A)(1) unconstitutional, enjoins its future enforcement by the Municipal Defendants, and orders reimbursement to plaintiff for the taxes paid as a result of the denial of the charitable tax exemption for the years 1989 to 1991 plus interest.

DATED: March 24, 1994

/s/ Kermit V. Lipez  
KERMIT V. LIPEZ  
Justice, Superior Court

## APPENDIX C

Me. Rev. Stat. Ann. tit. 36, § 652(1)(A)(1)

## EXEMPTIONS

## § 652. Property of institutions and organizations

The following property of institutions and organizations is exempt from taxation:

## 1. Property of institutions and organizations.

A. The real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State, and none of these may be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation in the classes of persons for whose benefit such funds are applied.

(1) Any such institution that is in fact conducted or operated principally for the benefit of persons who are not residents of Maine is entitled to an exemption not to exceed \$50,000 of current just value only when the total amount of any stipends or charges that it makes or takes during any tax year, as defined by section 502, for its services, benefits or advantages divided by the total number of persons receiving such services, benefits or advantages during the same tax year does not result in an average rate in excess of \$30 per week when said weekly rate is computed by dividing the average yearly charge per person by the total number of weeks in a tax year during which such institution is in fact conducted or operated principally for the benefit of persons who are not residents of Maine. No such institution that is in fact conducted or operated principally for the benefit of

persons who are not residents of Maine and makes charges that result in an average weekly rate per person, as computed under this subparagraph, in excess of \$30 may be entitled to tax exemption. This subparagraph does not apply to institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research.

For the purposes of this paragraph, "benevolent and charitable institutions" include, but are not limited to, nonprofit nursing homes and nonprofit boarding homes and boarding care facilities licensed by the Department of Human Services pursuant to Title 22, chapter 1665 or its successor and nonprofit community mental health service facilities licensed by the Commissioner of Mental Health and Mental Retardation, pursuant to Title 34-B, chapter 3. For the purposes of this paragraph, "nonprofit" means a facility exempt from taxation under Section 501(c)(3) of the Code . . . .

## APPENDIX D

Maine Legislative Record 2004 (May 21, 1957)

## LEGISLATIVE RECORD—HOUSE, MAY 21, 1957

An Act relating to Property Tax Exemption for Benevolent and Charitable Institutions (H. P. 1036) (L. D. 1467)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from Fryeburg, Mr. LaCasce.

Mr. LACASCE: Mr. Speaker, on item eight, An Act relating to Property Tax Exemption for Benevolent and Charitable Institutions, I don't know how many of you people have read this but it says,—“No such institution shall be entitled to tax exemption if it is in fact conducted or operated principally for the benefit of persons who are not residents of Maine and if stipends or charges for its services, benefits or advantages in excess of \$10 per week”.

Personally, it seems to me that where we are a vacation state and you are saying here that if it is conducted for the benefit of persons who are not residents of Maine, it is discriminating against the people who come to our state. Personally I can see no good in the bill and move for its indefinite postponement.

The SPEAKER: The Chair understands that the gentleman from Fryeburg, Mr. LaCasce, with respect to item number eight, Bill “An Act relating to Property Tax Exemption for Benevolent and Charitable Institutions, moves that this bill and all accompanying papers be indefinitely postponed.

The Chair recognizes the gentleman from Buxton, Mr. Bruce.

Mr. BRUCE: Mr. Speaker and Members of the House: I would respectfully call the attention of the gentleman from Fryeburg, Mr. LaCasce, to amendment under filing number, I don't recall the number, but it amends the bill to change the \$10 to \$15. Now this bill has been before the Taxation Committee, it has been approved by both chairmen of the Taxation Committee and either all of the members have approved it, or those who perhaps had misgivings about it, which perhaps could be one or two, have agreed to let it operate for two years and see what happens.

But the gentleman from Fryeburg, Mr. LaCasce, says he sees no reason for the bill. I think that the most important reason for the bill is approximately seven hundred thousand dollars spent all over the State of Maine on taxes to the towns, and I don't think that that is unimportant. I would also want him to know, and the members of the House, that this bill has had a great deal of study by the Taxation Department, it has been approved in essence by a great many of the camps that are operating, to my personal knowledge, and I know there are others who have approved it.

It is a very important bill and I certainly hope that the motion does not prevail after the amount of study and work that has gone into this over the years, not only in this session. It was before the Research Committee in 1953, a great study was made, the problem is a very important one and the bill was written actually by a member of the Supreme Judicial Court of the State of Maine. I am sure that I don't need to debate the question further and I hope that the motion of the gentleman does not prevail.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Maynard.

Mr. MAYNARD: Mr. Speaker, for a matter of information, I would like to know what this bill means. Could someone tell me?

The SPEAKER: The gentleman from Portland, Mr. Maynard, has addressed a question through the Chair to anyone who may answer if he chooses. The Chair recognizes the gentlemen from York, Mr. Hancock.

Mr. HANCOCK: Mr. Speaker, I don't have the bill before me but I can tell you the reasons for the bill. Throughout the State of Maine there are many incorporations of charitable and benevolent institutions. There is in the town of York alone at the present time one such institution that is considered charitable, benevolent, that has been a profit-making organization for quite a few years, and that is the York Harbor Osteopathic Hospital recently incorporated as a non-profit benevolent institution. We have a school in York which is under a little bit different section of our law but relates to the same subject and in the same manner.

In the town of Eliot there is a religious organization. All these organizations are formed and it is not difficult at all to incorporate as a non-profit benevolent institution, or you can call yourself an educational scientific institution, and be tax-exempt by the towns. This particular bill frankly does not help, I don't believe, my particular town, but it does help in some manner over the state. The idea being that those,—there are camps and homes that are incorporated as non-profit organizations that are done so by persons outside the State of Maine who come here, where it is a simple matter to incorporate, set up a summer camp and they call themselves a charitable institution. The only recourse of the towns in such cases is to demand an accounting to see whether or not it is such, profitable or not. And thus far that particular method has been unworkable in a sense. And the decisions of our law court have been most unfavorable with regard to the towns as to what shall be considered chari-

table and benevolent, to the extent that the particular Eliot case that I mentioned has been to the law court and they found against the town. It means I believe approximately twenty-five hundred dollars in taxes each year to the town of Eliot, that they do not receive.

Mr. Bruce, the gentleman from Buxton, could best explain this particular bill, although it is for those institutions that are set up within the State of Maine by out-of-state people for out-of-state people. That is the main goal of this particular bill. But there is a problem within the State of Maine and I understand the Maine Municipal Association is going to study it with regards to the whole. In other words, with regards to charitable and benevolent and educational and scientific and so forth, to try to divide those who are actually educational and scientific such as are some of our schools, and charitable and benevolent as are many of our hospitals.

But it is not too difficult to set up for some particular sham a tax-free organization in the State of Maine and the towns are stuck by it.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Maynard.

Mr. MAYNARD: Mr. Speaker, then as I understand it, this bill would help the State, help the towns collect taxes which are due them, is that correct?

The SPEAKER: The gentleman from Portland, Mr. Maynard, addresses a second question through the Chair to the gentleman from York, Mr. Hancock, who may answer if he chooses.

Mr. HANCOCK: That is the intent of the bill.

The SPEAKER: Is the House ready for the question? The question before the House is with relation to item number eight, Bill "An Act relating to Property Tax Exemption for Benevolent and Charitable Institutions."

The Chair recognizes the gentleman from Fryeburg, Mr. LaCasce.

Mr. LACASCE: Mr. Speaker and Members of the House: The way this is written, could this apply to schools as it is now?

The SPEAKER: The gentleman from Fryeburg, Mr. LaCasce, addresses a question through the Chair to anyone who wishes to answer. The Chair recognizes the gentleman from Brunswick, Mr. Walsh.

Mr. WALSH: Mr. Speaker and Ladies and Gentlemen of the House: I was one of those members of the Taxation Committee who questioned this measure when it came up.—I was perhaps one individual on the Taxation Committee who caused the gentleman from Buxton, Mr. Bruce, as much work and effort as he has put into this thing. I withdrew my objections not with the conviction that this is a perfect answer to replace what we have in the present statutes, but in the firm conviction after having a conference with leaders of all faiths, with people operating many different camps, with the highest court authority we could get in the State of Maine, that this is not going to harm any schools, that it is not going to create any great injustice of any nature on anyone in camps. And while it may not be the perfect answer, it is better than the one we have on the books at the present time, and that is the reason upon the authority and the word of those people that I withdrew my objections. Does that answer your question?

The SPEAKER: Is the House ready for the question? The Chair recognizes the gentleman from Bowdoinham, Mr. Curtis.

Mr. CURTIS: Mr. Speaker, in 1953 we had a question in that legislature, in that session, and also in 1955, that came under Chapter 50. Under Chapter 50 benevolent or charitable institutions were exempted up until 1955 up to five hundred thousand dollars in each locality.

Now there was a group who came into Richmond and Dresden and those bordering towns and bought a lot of property and planned to build a lot of farms and houses and planned to start factories and they came up to the Secretary of State and got a charter saying that they were a charitable institution, and they were White Russians. And then after the cloture rule had gone on, they went to the people of Richmond and the Selectmen and said they were exempt under taxes for the taxes under this Chapter 50. There wasn't anything we could do about it at that time. Although I tried to get an order in here to cut it down to ten per cent of the valuation of the towns, but I was unable to do it, but we did put it into the Legislative Research, and in 1955 that was adopted. Now what I am wondering, are we just doing this thing all over again. And as you can see the town of Richmond only had eleven hundred population and they had bought a great deal of property, and if they were to be exempt, you can see what would happen to a town if someone started out to do this thing. I just wonder what this is. Unless someone can tell me I would like to table it until tomorrow until I can find out more about it, and I so move.

The SPEAKER: The gentleman from Bowdoinham, Mr. Curtis, moves that Bill "An Act relating to Property Tax Exemptions for Benevolent and Charitable Institutions" be tabled and specially assigned for tomorrow pending passage for enactment. Will those who favor the tabling motion please say aye; those opposed, no.

A viva voce vote being taken, the motion did not prevail.

The SPEAKER: The Chair recognizes the gentleman from Gardiner, Mr. Hanson.

Mr. HANSON: Mr. Speaker and Members of the House: I wish to concur with the remarks made by the gentleman from Brunswick, Mr. Walsh. There was oppo-

sition at first in the Taxation Committee and after this amendment which is under filing number 279 was introduced by the gentleman from Buxton, Mr. Bruce, it was with the consent of the Chairman and myself after talking with other members, that we felt that this was a fair bill, possibly would be workable and at the present time there are a great many hardships that are caused on some of the municipalities by the exemption of taxes. I don't believe that this will affect any business that is in the State run by anybody that is in this State. I have talked with—like the gentleman who runs the Y.M.C.A. Camp and other members, and they appear to be in favor of the bill with no opposition.

The SPEAKER: Is the House ready for the question? The question before the House is the motion of the gentleman from Fryeburg, Mr. LaCasce, that Bill "An Act relating to Property Tax Exemptions for Benevolent and Charitable Institutions", House Paper 1036, Legislative Document 1467, and all accompanying papers be indefinitely postponed.

Will those who favor the motion to indefinitely postpone please say aye; those opposed, no.

A viva voce vote being taken, the motion to indefinitely postpone did not prevail.

Thereupon, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.